

MINUTES

INDIANA STATE BOARD OF DENTAL EXAMINERS

OCTOBER 3, 2008

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Williams called the meeting to order at 9:00 a.m. in the Professional Licensing Agency Conference Room W064, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 15-5-1.1-6(c).

Board Members Present:

Galen Williams, D.D.S., President
Matthew Miller, D.D.S., Secretary
Richard T. Newton, D.D.S.
Gary Haller, D.D.S.
Theodore Rokita, D.D.S.
Philip Catey, D.D.S.
Steven Hollar, D.D.S.
Charles Heape, D.D.S.
Clance LaTurner, Consumer Member

Board Members Absent:

Jill Burns, D.D.S., Vice President
Laverne Whitmore, L.D.H., B.S.

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Kristine Yarde, Assistant Board Director, Professional Licensing Agency
Liz Brown, Deputy Attorney General, Office of the Attorney General

II. ADOPTION OF THE AGENDA

A motion was made and seconded to adopt the agenda, as amended.

MILLER/LATURNER
Motion carried 8-0-0
Dr. Heape was not present

III. ADOPTION OF THE MINUTES FROM THE SEPTEMBER 5, 2008 MEETING OF THE BOARD

A motion was made and seconded to adopt the minutes of the September 5, 2008 meeting of the Board.

HALLER/NEWTON
Motion carried 8-0-0
Dr. Heape was not present

IV. APPEARANCES

A. PROBATIONARY

- 1. Tammy Bacon, L.D.H., License No. 13005564A**
Administrative Cause No. 2008 ISDB 0005

Ms. Bacon requested that her appearance be rescheduled so that she may attend a continuing education program. She will provide proof of her attendance at the continuing education course at her next appearance. Dr. Williams approved this request prior to the meeting.

- 2. Daniel Fink, D.D.S., License No. 12007602A**
Administrative Cause No. 2006 ISDB 0006

Dr. Fink appeared with his on-site supervisor, Dr. Ruth Jimerson, before the Board, as requested, regarding his ongoing probationary status. The Board reviewed with Dr. Jimerson what will be expected of her as the on-site supervisor and what details are required in her reports. The Board asked if the staff was aware of Dr. Fink's situation and both Dr. Fink and Dr. Jimerson stated they are fully aware. The office is set to open on October 15, 2008 in Evansville, Indiana. Currently there are two (2) dentist, one (1) hygienist, two (2) dental assistants, one (1) office person and one (1) business person within the office. Hours will be 8:00 a.m. to 5:00 p.m. Monday – Thursday and 8:00 a.m. to 2:00 p.m. on Fridays. The Board requested Dr. Jimerson's to submit her first monthly report on November 15, 2008 and the 15th of every thereafter. The Board stated that Dr. Jimerson will be required to appear with Dr. Fink at the January 9, 2009 meeting.

- 3. Christopher Leonard, D.D.S., License No. 12009363A**
Administrative Cause No. 2005 DB 0002

Dr. Leonard appeared before the Board, as requested, regarding his ongoing probationary status. He told the Board he has filed Chapter 11 reorganization bankruptcy and apologized for his work-site monitor reports being late for August and September. Dr. Leonard said he will have them to the Board in a week but also feels his work-site monitor has grown tired of having to review his files. Dr. Leonard revealed that he chooses and takes the patient files to his monitor for the report. The Board explained that the monitor is to randomly select patient files for the audit himself. The Board suggested Dr. Leonard find a new monitor if his current monitor will not do the job correctly. Dr. Leonard told the Board which medications he is currently taking; he advised he is still volunteering at the Esperanza Center in Greenwood a few times a month. Dr. Leonard also stated that his wife has not been to his office.

- 4. Trevor Treasure, D.D.S., License No. 12010719A**
Administrative Cause No. 2007 ISDB 0002

Dr. Treasure appeared before the Board, as requested, regarding his probationary status. He advised his DEA is still being processed in Chicago but things are still going very well for him. He attends counseling regularly and told the Board which medications he is currently taking. He told the Board about his work at Methodist Hospital performing advanced oral surgeries on trauma patients. The Board noted they are pleased and impressed by Dr. Treasure's confidence and sense of well-being.

B. APPLICATION

C. RENEWAL

V. ADMINISTRATIVE HEARINGS

- A. State of Indiana v. Edward T. Mamaril, D.D.S., License No. 12008594A**
Administrative Cause No. 2008 ISDB 0001
Re: Complaint

Parties and Counsel Present:

Respondent was present and was represented by Counsel Thomas Trauring
Krista Jewsbury, Deputy Attorney General for the State of Indiana
Felicia Warren, Court Reporter

Participating Board Members:

Dr. Williams (Hearing Officer)
Dr. Miller
Dr. Newton
Dr. Hollar
Dr. Catey
Dr. Haller
Dr. Rokita
Dr. Heape
Ms. LaTurner

Case Summary: On March 13, 2008 a complaint was filed by the Indiana Attorney General's Office against the Respondent alleging two counts of violation of the law. The State told the Board that Count I against the Respondent is in violation of Indiana Code §25-1-9-4(a)(3) in that a practitioner has knowingly violated any state statute or rule, regulating the profession in question, to wit: 828 IAC 1-1-15(a) "providing access to drugs for someone for use other than in the proper course of dental diagnosis or treatment," to wit: the Respondent admitted that he prescribed his wife medication for foot pain and not for dental treatment. Count II alleges the Respondent is in violation of Indiana Code § 25-1-9-4(a)(3) in that a practitioner has knowingly violated any state statute or rule, regulating the profession in question, to wit: 828 IAC 1-1-15(a)(8) "practicing beyond the scope permitted by law," to wit: Respondent does not deny that he prescribed pain medication for his wife due to post operative pain from a foot surgery and he felt the pain she experienced after her foot surgery was not adequately addressed by the Class 3 prescription given by her podiatrist. The State entered into evidence exhibit "A" which is copies of seventeen (17) prescriptions for the Respondent's wife Kathryn Mamaril. The State also entered into evidence exhibit "A1" which is an affidavit given by a CVS pharmacist attesting that the prescriptions in exhibit "A" are true and accurate copies of prescriptions called in or written by the Respondent. The State entered into evidence exhibit "B" which is patient records for the Respondent's wife. The Respondent stated the records detail every procedure his wife has had at his office including the prescriptions he wrote for her. The State noted the two prescriptions he wrote for her foot pain are not noted in the records. The State entered into evidence Exhibit "C" which is an email response from the Respondent to the Attorney General's Office after being notified of the consumer complaint filed against him. In the email the Respondent admitted that he did not use good judgment when he prescribed pain medication for his wife following a foot surgery. The Respondent testified that he had never before prescribed medications for non-dental treatment. He stated he has been married to his wife for twenty-nine (29) years and after failing

to reach her podiatrist he prescribed the medication to treat her pain. The Respondent's counsel called the first witness Harry McKay who is a pharmacist at CVS North in Kokomo, Indiana. Mr. McKay stated he has been a pharmacist for thirty-seven (37) years. Mr. McKay testified that over ninety percent (90%) of all dentist prescriptions are called in to the pharmacy and most are called in by the dental staff, not the dentist. He stated dental patients are typically prescribed 24 tablets of Lortab sometimes with a refill. The instructions are to take one (1) to two (2) pills every four (4) to six (6) hours and if an unusual prescription is called in then the pharmacist will call and speak to the dentist directly. Mr. McKay reviewed the State's exhibit "A", copies of the prescriptions called in for Mrs. Mamaril. He stated he does not work at that CVS location but was able to explain what the prescriptions were for and that they were called in to the pharmacy. Mr. McKay testified that with the frequency of prescriptions and the number of refills on some of them that he would have contacted the dentist directly. The State asked Mr. McKay if he knows the Respondent and Mr. McKay stated the Respondent has been his dentist for the past three (3) years but he only knows him from the twice yearly visits. Mr. McKay admitted that they do not request DEA numbers for local offices calling in controlled substances and although there is a certain spoken cadence which lets a pharmacist know it is someone in the field calling in the prescription, they do tend to trust without knowing who is calling in the prescription. The Respondent's Counsel called as a witness Elaine Elliott. Ms. Elliott testified that she worked at the front desk in the Respondent's practice for twelve (12) years from 1995 to 2007. Ms. Elliott said she moved to Huntington in 2007 and that is why she left employment there. She stated she was a friend to the Respondent's wife and it was her responsibility to call in prescriptions that the Respondent prescribed and there were procedural instructions to follow. She testified that the Respondent was strict and conservative with controlled substance prescriptions. Ms. Elliott said she was not authorized to call in prescriptions that were not authorized by the Respondent and all prescriptions that were called in were to be placed in the patient's dental record. Ms. Elliott said Mrs. Mamaril would call the office and ask her to call in a prescription and that the Respondent had said it was okay. Ms. Elliott explained she did this for her friend and did not alert the Respondent to the fact that she did this. She said the Respondent has a very busy practice and she did not want to disturb him, that she took Mrs. Mamaril for her word that it was okay because she had so many dental procedures. Ms. Elliott admitted that she did not enter these prescriptions into Mrs. Mamaril's dental record and admitted she was breaking the law but she wanted to keep her job since she was a single mother and she did not want to damage her friendship with Mrs. Mamaril. Ms. Elliott said Mrs. Mamaril was a functioning person and did not appear to be an addict but she knew that calling in the prescriptions was wrong and she did it anyway. The Respondent was called as a witness and asked to describe his practice. The Respondent testified that he practices general dentistry but found a need in the population to place an emphasis on restorative and cosmetic dentistry. He is a solo practitioner and he does sedation dentistry. Respondent entered into evidence exhibit #1 which is photos of mouths of some of his patients. The Respondent said he wanted the Board to see the photos so they understand that the work he does is invasive and does require pain management. The Respondent provided a detailed accounting of the timeline for dental procedures he performed on his wife. He testified he was unaware that Ms. Elliott had called in prescriptions for his wife, he never authorized them and the pharmacy never contacted him to ask about them. He explained he was traveling a lot to California, he was busy in his practice, and he was caring for his ailing mother so he did not notice that his wife was having troubles and never saw any evidence that she had a drug problem. The Respondent expressed remorse for not being available to his wife for a long period of time and being

consumed with his own work and ambitions. Respondent testified he first learned about the additional prescriptions called in for his wife after the complaint was being investigated by the Attorney General's Office. He confronted his wife but Ms. Elliott was no longer working for him and he denied having a drug problem himself. Respondent's Counsel called Kathryn Mamaril as a witness. Mrs. Mamaril tearfully recounted the personal feelings and issues that led her to become addicted to pain medications and admitted to calling the office and asking Ms. Elliott to call in prescriptions for her. She stated the Respondent had no knowledge that she did this and he was a good man who did not deserve what she has done to him. Mrs. Mamaril stated that she kept the prescriptions in her purse and her husband does not go into her purse. She told the Board that she reached a point where she felt awful and stopped taking the medications cold turkey. She has not had formal treatment for her addiction but says she knows she will never do it again because she never wants to feel that bad again.

The Board found that the State has proved its burden in finding Dr. Mamaril in violation of Count I and Count II of the Complaint.

Board Action: After hearing testimony and evidence presented, a motion was made and seconded to issue a letter of reprimand and to place Respondent's license on Indefinite Probation. Respondent may not petition for withdrawal of probation for three (3) years from the date of the order. The following terms and conditions:

1. While on probation, Respondent's practice of dentistry shall be governed by the following **TERMS AND CONDITIONS**:
 - a. Respondent shall keep the Board informed of his residential address and telephone number at all times.
 - b. Respondent shall keep the Board informed of his dental practice address and telephone number at all times.
 - c. Respondent shall submit monthly reports to the Board, by mail, containing a prescription log of all controlled substances prescribed by Respondent. This report shall contain the following:
 - i. Patient identifier (i.e. patient number, initials, etc. Do not include full patient name.).
 - ii. Medication prescribed.
 - iii. Number of pills prescribed.
 - iv. Number of refills prescribed.
 - d. Respondent shall make quarterly appearances before the Board.
 - e. Respondent shall write or call in all prescriptions himself and shall not permit any office personnel to call in prescriptions in his name.
 - f. Respondent shall complete a minimum of six (6) hours of continuing education in the subject area of pharmacology.
2. IT IS FURTHER ORDERED that Respondent shall pay the cost of this proceeding, including forty-four dollars and sixty cents (\$44.60) payable to the Office of the Attorney General at 302 West Washington Street, Indianapolis, Indiana, 46204 and one hundred twenty-two dollars and forty-seven cents (\$122.47) payable to the Indiana Professional Licensing Agency at 402 West Washington, Room W072, Indianapolis, Indiana.
3. IT IS FURTHER ORDERED that Respondent shall pay a fine in the amount of \$1,000.00 per Count, for a total of \$2,000.00, payable within sixty (60) days of the date of this order to the Indiana Professional Licensing Agency, 402 West Washington Street, Room W072, Indianapolis, Indiana.
4. Violation of this Final Order, or otherwise reported non-compliance with the statute and regulations relating to the competent practice of dentistry may result in the State independently, or at the request of the Board, requesting an

emergency suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4(a)(10), any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

HOLLAR/HALLER

Motion carried 7-1-1

Ms. LaTurner dissented and Dr. Miller abstained

- B. State of Indiana v. Bryan Eugene Spilmon, D.D.S., License No. 12008986A**
Administrative Cause No. 2004 DB 0005
Re: Complaint

Parties and Counsel Present:

Respondent was not present and was not represented by Counsel
Mark Mader, Deputy Attorney General for the State of Indiana
Felicia Warren, Court Reporter

Participating Board Members:

Dr. Williams (Hearing Officer)
Dr. Miller
Dr. Hollar
Dr. Catey
Dr. Haller
Dr. Rokita
Dr. Heape
Ms. LaTurner

Case Summary: A complaint was filed against the Respondent by the Attorney General's Office on March 10, 2005. The complaint is the result of a federal arrest warrant issued by the United States District Court, Northern District of Indiana, on July 16, 2006, for the Respondent. Respondent was suspected and charged under federal indictment with the offenses of health care fraud, false billing to Medicaid, concealing co-payments from Medicaid, conspiracy, and money laundering. According to the federal indictment, Respondent obtained more than two million dollars from the fraudulent claims. On July 19, 2004, Respondent and his wife voluntarily surrendered to Federal authorities. On August 12, 2004, the Board issued an Order placing Respondent's license on Summary Suspension. Respondent has been on Summary Suspension since that time. On February 23, 2005, Respondent pled guilty to thirteen (13) counts of the Federal indictment. The Respondent is currently serving a Federal prison sentence and submitted a written request to the Board to continue this hearing until he is able to personally attend following his July 2009 release from prison. The State filed an objection to the Respondent's motion for continuance noting that the Respondent has tried to have his guilty plea set aside but a judge determined his guilty plea was freely and voluntarily given. The Respondent appealed his case to the United States 7th Circuit Court of Appeals in Chicago, Illinois and July 19, 2006 the Court of Appeals upheld the District Court's ruling. On October 16, 2006 the Respondent's attorney requested that his case be reviewed by the U.S. Supreme Court. The Supreme Court declined to hear his appeal. On November 13, 2006 the Supreme Court of the United States denied Respondent's Petition for Writ of Certiorari. The State noted that they are not aware of any other appeal the Respondent could have. The State told the Board that the Respondent's letter requesting a continuance makes a vague reference that he continues to challenge the legality of his plea agreement in the federal court system but he does not indicate what form that challenge consists of. The

Respondent also stated that he cannot afford an attorney to represent him and his incarceration prevents his attendance at the hearing. The State argued these are not satisfactory reasons to continue the hearing and the Respondent's request be denied.

Board Action: A motion was made and seconded to continue the hearing in this matter until December 5, 2008 in order for the Board to arrange an appearance by the Respondent via a telephone conference call.

HEAPE/LaTURNER
Motion carried 8-0-0
Dr. Newton was not present

VI. SETTLEMENT AGREEMENTS

There were no settlement agreements before the Board.

VII. NOTICE OF PROPOSED DEFAULT

There were no Notices of Proposed Default before the Board.

VIII. OLD/NEW BUSINESS

There was no old/new business

IX. DISCUSSION

A. Continuing Education Audit

Ms. Vaught informed the Board letters were sent on September 16, 2008 to dentists and dental hygienists who were randomly selected for the continuing education audit for the 2006-2008 biennium. The deadline for the audit is October 17, 2008.

Two certificates were questioned as whether they meet the requirement of the Two (2) hour ethics and Indiana jurisprudence requirement. The first one was the First District Dental Society (FDDS). The course was titled Infection Control, Indiana Law, and OSHA for three (3) hours. The other one was sponsored by University of Southern Indiana (USI) titled, "Dental Ethics and Legal Issues" for three (3) hours. The Board requested that Ms. Vaught request the syllabus for each of the programs in order for the Board to determine whether this meets there 2 hour ethics and Indiana jurisprudence requirement.

Board Action: A motion was made and seconded to request USI to provide a syllabus of their program.

HOLLAR/MILLER
Motion carried 9-0-0

Board Action: A motion was made and seconded to for FDDS to provide a syllabus for their program.

MILLER/LaTURNER
Motion carried 9-0-0

B. Professional Protector Plan for Dentists (PPP)

Correspondence from Jennifer Snodgrass, Marketing Representative for PPP, was reviewed. Ms. Snodgrass requested as to whether the Board has specifically and affirmatively ruled that the administration of Botox and use of dermal fillers for elective cosmetic procedures falls within the definition of dentistry." The Board requested that a response be sent that the board has not promulgated or drafted an administrative rule regarding the use of Botox.

C. Angela Becker Orthodontics

Practitioners who were chosen in the Continuing Education Audit have submitted certificates from Angela Becker Orthodontics. This organization has not submitted an application to be continuing education provider as required by law. Ms. Leilani Looney contacted IPLA about our denial of their programs and advised office staff that the Indiana Dental Association (IDA) has been reviewing and approving their programs for the last seven (7) years. Jay Dziwlik of the IDA told the Board they have co-sponsored some of their programs in the past and the certificates from Angela Becker Orthodontics should indicate that but they do not. The IDA could not say for which programs they have co-sponsored because they did not have that information with them at the meeting.

Board Action: A motion was made and seconded to accept the Angela Becker Orthodontics certificates being submitted in this audit.

NEWTON/HOLLAR
Motion carried 9-0-0

X. APPLICATION REVIEW

A. Endorsement

There were no endorsement applications to review.

B. Examination

There were no examination applications to review.

C. Anesthesia and Sedation Permits

There were no anesthesia permits to review.

D. Dental Intern Permit

There were no dental intern permits to review.

E. Mobile Dental Facility

There were no mobile dental facility applications to review.

F. Instructors License

There were no instructors' license applications to review.

G. Professional Corporations

There were no professional corporation applications to review.

XI. RENEWALS

There were no renewals.

XII. PROBATIONARY/CONDITIONAL LICENSE REPORT

A. Teresa M. Goodman, D.D.S.

Dr. Hollar reviewed Dr. Goodman's probationary file. Her report from the Indiana Dental Well-Being Program for September 2008 and worksite monitor, Charles Mill, D.D.S. were reviewed and accepted. Dr. Goodman's next appearance is scheduled for December 5, 2008.

B. Marci L. Huth, L.D.H.

Dr. Hollar reviewed Ms. Huth's probationary file. Ms. Huth was sent correspondence regarding her noncompliance with the probationary terms at the last address of record but it was returned unable to forward, moved and left no address. She was required to notify the Board within 72 hours of any change of address. Ms. Huth's was required that she submit monthly supervisory reports from any and all dental employers. Reports for the months of June, July, August and September 2008 have not been submitted.

Board Action: A motion was made and seconded to issue an Order to Show Cause. The hearing will be set for December 5, 2008.

MILLER/LaTURNER
Motion carried 8-0-0
Dr. Newton was not present

C. James W. Cahillane, D.D.S.

Dr. Hollar reviewed Dr. Cahillane's probationary file. His report from the Indiana Dental Well-Being Program for September 2008 was reviewed and accepted. Dr. Cahillane's next appearance is scheduled for December 5, 2008.

D. Penelope Lynn Dunlap, D.D.S.

Dr. Hollar reviewed Dr. Dunlap's probationary file. Her monitoring report from Dr. Hake was reviewed and accepted. Dr. Dunlap is scheduled for her presentation at Indiana University to discuss her conduct before the senior year dental students on November 24, 2008.

E. Bland P. Walker, D.D.S.

Dr. Hollar reviewed Dr. Walker's probationary file. His report from the Indiana Dental Well-Being Program for September 2008 was reviewed and accepted.

F. Atteyat Hadizadeh, D.D.S.

Dr. Catey reviewed the Dr. Hadizadeh's information submitted. She appeared before the Board on April 4, 2008 regarding her application for renewal. Disciplinary action had been taken by the Kentucky Dental Board. The Board renewed her license without taking any action but requested that upon completion of the probationary requirements that she submit proof that she has complied with the Kentucky Board. A letter from the Kentucky board stated that Dr. Hadizadeh has completed all requirements and the restriction on her license

to provide root canal therapy has been lifted. She has complied with the Board's request.

G. Eugene R. Kuzmic, D.D.S.

Dr. Catey reviewed Dr. Kuzmic's information. Dr. Kuzmic applied for renewal on March 28, 2008 but did not have the required continuing education but gave the Board information as to why he was unable to complete it by the renewal date. The Board granted the renewal and allowed Dr. Kuzmic three (3) months to obtain the required continuing education. On September 9, 2008, Dr. Kuzmic submitted information that he had completed compendiums and submitted them to Aegis Communications. Aegis did not grade and no certificates of completion were issued because they were not submitted timely. Dr. Kuzmic requested that the Board accept the completion of the compendium even though they were not graded or submitted timely.

Board Action: After discussion, a motion was made and seconded that since he has not complied with the Board's requirement the he be assessed a civil penalty of \$1,000 to be submitted within twenty-one (21) days and completion of twenty (20) hours of continuing education within the next six (6) months.

MILLER/HALLER
Motion carried 8-0-0
Dr. Newton was not present

H. Tammy Bacon, L.D.H.

Dr. Hollar reviewed Ms. Bacon's probationary file. Ms. Bacon was scheduled to appear today but was excused in order to attend a continuing education seminar. Her report Alpha Resource was reviewed and accepted. Ms. Bacon's next appearance is scheduled for December 5, 2008.

XIII. CONTINUING EDUCATION

A. Periodontal Specialists of Indiana

The Board reviewed an application and documentation from Periodontal Specialists of Indiana to be a provider of continuing education until March 2, 2010.

Board Action: A motion was made and seconded to approve Periodontal Specialists of Indiana to be a provider of continuing education until March 2, 2010.

LaTURNER/MILLER
Motion carried 8-0-0
Dr. Newton was not present

B. Angela Becker Orthodontics

The Board reviewed an application and documentation from Angela Becker Orthodontics to be a provider of continuing education until March 2, 2010.

Board Action: A motion was made and seconded to approve Angela Becker Orthodontics as a continuing education provider until March 2, 2010.

LaTURNER/MILLER

Motion carried 8-0-0
Dr. Newton was not present

XIV. REPORTS

- A. Ms. LaTurner reported she attended a meeting of the Bioterrorism Advisory Counsel. They discussed Indiana's preparedness with regards to terrorist attacks.

XVI. ASSOCIATION REPORTS

A. Indiana Dental Association

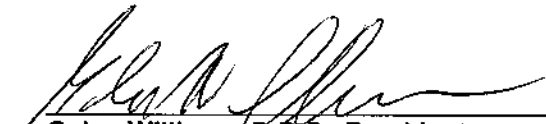
The IDA reported their relationship with Candace Backer has changed. Ms. Backer will now be contracting directly with the IDA through her company Continuing the Care instead of with the Indiana State Medical Association.

B. Indiana Dental Hygiene Association

There was no report given.

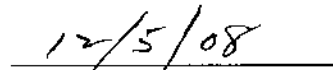
XVII. ADJOURNMENT

There being no further business, and having completed its duties, the meeting of the Indiana State Board of Dentistry adjourned at 4:00 p.m.


Galen Williams, D.D.S., President


Date


Matthew Miller, D.D.S, Secretary


Date